IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 129 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHRI R.M.SOLANKI - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR YN OZA with MR PS CHAMPANERI for Applicant(s) : 1,
MR AY KOGJE, APP for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 09/03/2006

ORAL JUDGMENT

Rule. Mr. AY Kogje, Ld. APP waives service of rule on behalf of the opponents.

2. This is an application filed to challenge order dated 13/2/2006 passed by the Ld. 2nd Judicial Magistrate First Class, Ahmedabad [Rural] issuing non-bailable warrant against the applicant under the provisions of section 70 of the Code of Criminal Procedure. The said order was passed on the application submitted to him by the Deputy Commissioner of Police, Zone-6, Ahmedabad City on the same day i.e. 13/2/2006. In the application it is stated that applicant is a police officer working as Deputy Superintendent of Police and that the applicant has abused his powers as a police officer and he has falsely implicated one Vindobhai Ratilal Parmar in the offences under the provisions of Narcotic Drugs and Psychotropic Substances Act [NDPS Act] and also the Arms Act. It is further stated in the said application that such case has been cooked up against Vindobhai by the applicant with the aid of one Hansraj Mangalsinh Shekhavat also the police officer and got him arrested in the case under the NDPS Act. Said Vindobhai filed application before the concerned Court at Junagadh and he has been released on bail. It is further stated in the application that the Deputy Police Commissioner, Zone-6, Ahmedabad City was incharge of investigation and during which it revealed that present applicant was responsible for making a false case against said Vinodbhai. He, therefore, summoned the applicant to remain present before him repeatedly, but he did not remain present and, therefore, in all probabilities he was absconding.

He, therefore, requested the Ld. Magistrate to grant him warrant for his arrest.

2.1. I have heard Mr. YN Oza, Ld. Senior Advocate appearing with Mr. PS Champaneri for the applicant and Mr. Kogje, Ld. APP for the opponent – State. I have also perused the record of this revision application and in particular the application made to the Ld. Magistrate dated 13/2/2006 and the order passed below it. The contents of the application show that only in one paragraph it is stated that the efforts made to secure the presence of the applicant have failed and hence the Ld. Magistrate is called upon to issue non-bailable warrant under section 70 of the Code of Criminal Procedure. The order of the Ld. Magistrate shows that he has not called for details of the attempts made by the concerned officer to secure the presence of the applicant. It also appears that the concerned officer has not made any attempt by himself going to the place of the applicant to cause his arrest. In fact, the said application does not reveal any effort made on this line by the concerned officer. It only appears that he has followed the procedure prescribed under section 160 of the Code of Criminal Procedure, which is essentially meant for securing the presence of the witness or person acquainted with the facts of the case as laid down by the Apex Court in the decision rendered in the case of STATE v/s. N.M.T. JOY IMMACULATE reported in (2004) 5 S.C.C. Page 729. In view of the same, it clearly appears that the impugned order is passed without application of mind

and on that sole ground, it is required to be quashed and set aside and it is hereby ordered to be quashed and set aside. However, the present applicant is now directed to remain present before the Ld. Sessions Judge, Ahmedabad [Rural] on or before 16th March, 2006. If he files an application under any of the provisions of the Code of Criminal Procedure including that of section 438, the learned Judge will expeditiously decide the same, but in any case, not later than 20th March, 2006, and till such time the application is decided, the Investigating Officer shall not arrest the applicant.

Application is allowed accordingly. Rule made absolute. D S permitted.

[Akshay H Mehta, J.]

* Pansala.